

## **DETAILED ACTION**

### ***Priority***

Examiner acknowledges Applicant's correspondence dated 01/26/2004 regarding his/her claim to priority. As such, this application (10/663,854) claims the benefit of provisional U.S. Patent Application 60/483,460, filed June 30, 2003, entitled "Process, System And Method For Interactive Shopping And Selling Via A Wireless Network." Examiner will utilize 6/30/2003 as the priority date for claims with 35 USC §112 support in the above provisional application.

Further, Examiner notes related provisional U.S. Patent Application No. 60/461,031, filed April 8, 2003, entitled "Process, System And Method For Trading Goods, Information and Services Via A Wireless Network", and Applicant's lack of claim to priority to this provisional application during copendency.

### ***Specification Objections***

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.
  - a. The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words.
  - b. The abstract language should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc. More specifically, Applicant states "This abstract is provided to comply with rules requiring an abstract, and it is submitted with the intention that it will not be used to interpret or limit the scope or meaning of the claims." [See Abstract]. This legal phraseology appears unnecessary and does not further assist readers in deciding whether there is a need for consulting the full patent text for details.
2. Applicant does not label "campaign database" on page 9, paragraph 33, as "190" in reference to Figure 1
3. Examiner is unclear what the acronym "NBAS" represents on page 11, paragraph 38 in reference to Figure 3A.

4. Applicant defines “WMM” on page 9, paragraph 33, but fails to consistently utilize such acronym. For example, see page 12, paragraph 40.
5. Applicant states “are” on page 15, paragraph 45 in lieu of “and” in reference to “format 3”. Further, Applicant states “thy” on page 24, paragraph 77, in lieu of “they”.
6. Applicant defines “WSN” on page 3, paragraph 23, but fails to consistently utilize such acronym. For example, see paragraphs 49, 51, 54, 55, etc.
7. Examiner suspects that Applicant intended to also reference Figure 6B on page 17, paragraph 52 in addition to Figure 6A.
8. Applicant does not label the “campaign manager module” on page 23, paragraph 75 with a reference number. This raises ambiguity when a “shopping campaign manager module” is referenced in paragraph 74. Further, the “transaction manager module” is not labeled in paragraphs 76 & 80.
9. Applicant does not label the “SMS Interface Module” on page 24, paragraph 79, with reference number (1403).
10. Examiner suspects that Applicant intended to state “tracked” in lieu of “ack’ed” on page 25, paragraph 80.
11. As per Claim 17, the specification is objected to as failing to provide proper antecedent basis for “distinct type”. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).
12. As per Claim 23, the specification is objected to as failing to provide proper antecedent basis for “applets”.
13. As per Claim 27, the specification is objected to as failing to provide proper antecedent basis for “conditions”.
14. As per Claim 32, the specification is objected to as failing to provide proper antecedent basis for “available users”.

### ***Drawings***

The drawings are objected to because of the following:

1. Figure 10 portrays Phase 3 (1012) and Phase 4 (1013) as the same. In reference to Applicant's specification, Phase 3 (1012) should be "Campaign Results Notification" [see page 20, paragraph 63].
2. The "shopping campaign manager module (1407) on page 23, paragraph 74, is not labeled in Figure 14.
3. Multiple of Applicant's Figures (1, 4, 5, 6A, 7A, 8, 15, etc.) contain alterations that appear non-compliant with 37 C.F.R. §1.84 (l), (p), and/or (q). As such, Examiner questions their adequacy for reproducibility.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

Claims 1-12, 15, 16, 24, 30-37, 39-43, 45-48, 53, 55, 57-62, 66-76, 78, 79, 83, 85, 86, 91 & 93 are objected to because of the following informalities:

1. As per Claim 1, Applicant misspelled “auction” in the assisting step. Further, Applicant introduces “sellers of products” followed by “one or more products”, then “the product”. This introduces ambiguity as to whether a product or products are being offered. In this vein, Applicant introduces “one or more Dutch auctions” followed by “a Dutch auction”, then “each of the Dutch action sales campaigns”, then “a Dutch auction sales campaign”, then “that Dutch auction”, then “multiple of the Dutch auctions”, then “those Dutch auctions”. This clearly lacks consistency and is ambiguous in reference. In addition, Examiner is unclear how “a sales campaign” is different from “a planned sales campaign”. Further, Examiner suggests that Applicant remain consistent by stating “multiple copies of the product available” in lieu of “multiple available copies” and “one or more of the copies of the product available”. Next, Examiner questions whether “multiple of the users” is the same or different than the “multiple users” of the first receiving step. Next, Examiner questions whether, “the product category interest information” is intended to refer back to “one or more categories” because of the inconsistent use of terminology. Next, Applicant refers to “each of the users determined” then “that user”, which raises ambiguity. Lastly, Applicant refers to “determining winners” then “one or more of the determined winners”, then “that determined winner”, then “the determined winners”, then “that that

determined winner” and “a geographical pick-up location” then “that pick-up location”. Here Examiner suggests that Applicant be consistent in his/her defined terms to avoid ambiguity while retaining antecedent basis for those terms.

Finally, as written, Applicant’s placement of the last three lines of Claim 1 is confusing. This appears to be preamble language.

2. As per Claim 2, Examiner is unclear to which “users” Applicant is referring. Further, Applicant states “messages” when Claim 1 only introduces a “message”. In addition, Applicant is unclear what is being billed: (1) for the text message reply, (2) for the item if won, etc.
3. As per Claim 3, Applicant introduces “one of the sellers” which lacks consistency with “each of multiple sellers” or “the seller” of Claim 1. Further, “the shopping server system” is only referenced in the preamble of Claim 1 and not within the step limitations of the method and thus lacks proper antecedent basis.
4. As per Claim 4, Applicant introduces “one of the users” which lacks consistency with “each of the users” or “the user” of Claim 1. Further, “the shopping server system” is only referenced in the preamble of Claim 1 and not within the step limitations of the method and thus lacks proper antecedent basis. Further, Examiner suggests consistency by utilizing “multiple copies of the product available” in lieu of “multiple available copies.”
5. As per Claim 5, Applicant introduces “one of the users” which lacks consistency with “each of the users” or “the user” of Claim 1. Further, “the shopping server system” is only referenced in the preamble of Claim 1 and not within the step

limitations of the method and thus lacks proper antecedent basis. Further, Applicant's use of "potential" may not distinguish "one or more categories of products" from Claim 1's first receiving step.

6. As per Claim 6, Applicant introduces "one of the users" which lacks consistency with "each of the users" or "the user" of Claim 1. Further, "the shopping server system" is only referenced in the preamble of Claim 1 and not within the step limitations of the method and thus lacks proper antecedent basis.
7. As per Claim 7, Applicant states "each of the Dutch auctions" and "that Dutch auction" when this section of Claim 1 refers only to "a Dutch auction" in that section.
8. As per Claim 8, Applicant states "one of the Dutch auctions" and "that Dutch auction" when Claim 1 refers only to "a Dutch auction" in that section. Further, "the shopping server system" is only referenced in the preamble of Claim 1 and not within the step limitations of the method and thus lacks proper antecedent basis.
9. As per Claim 9, Applicant states "one of the sellers" and "one of the Dutch auctions" when Claim 1 refers only to "the seller" and "a Dutch auction" in that section.
10. As per Claim 10, "the shopping server system" is only referenced in the preamble of Claim 1 and not within the step limitations of the method and thus lacks proper antecedent basis.

11. As per Claim 11, Examiner suggests that Applicant insert the word “selected” prior to “users” in the obtaining step and second selecting step for clarity. Further, for consistency, Applicant should state “the one or more items” in lieu of “one or more of the items” in both selecting steps.
12. As per Claims 12, 15 & 16, Examiner notes that, as written, Applicant is limiting the “method” as opposed to directly further limiting the claim via recited elements. Applicant should state “wherein an auction...”
13. As per Claim 24, Examiner suggests that Applicant state “the method further including” in lieu of just “including” for clarity.
14. As per Claims 30 & 31, Applicant states “users” without indication of whether this is “multiple users” or “selected users”.
15. As per Claim 32, Examiner suggests that Applicant remove the phrase “that indicate the auction” as this is confusing. Further, Examiner is unclear how “available users” are different than “selected users”. Here, “multiple available users” is confusing considering that Applicant already uses “multiple users” in Claim 11.
16. As per Claim 33, Examiner is unclear whether Applicant is referring to “multiple users” or “selected users” when “notifying users” of Claim 33.
17. As per Claim 34, Examiner is unclear as to whether “a user” is one of the “multiple users” of Claim 11. Further, does “the users” of Claim 34 include “one or more of the [selected] users”?

18. As per Claim 35, Applicant is unclear whether “the users” is “the multiple users” and who “that user” is. Further, “from each of at least some of” is confusing language.
19. As per Claim 36, Applicant is unclear whether “the users” is “the multiple users.” Further, Applicant speaks of “those users” followed by “that user” without particular reference to a specific user.
20. As per Claim 37, Applicant is unclear who “those users” are in reference to Claim 35.
21. As per Claim 39, Applicant is unclear who “those users” are in reference to Claim 35. Further, Applicant states “an applications”.
22. As per Claim 40, Applicant is unclear who “those users” are in reference to Claim 35.
23. As per Claim 41, Applicant is unclear who “those users” are in reference to Claim 35.
24. As per Claim 42, Applicant is unclear of whom exactly “that user” is. Applicant consistently fails to distinguish various users.
25. As per Claim 43, Applicant states “a user performing the responding”. Here, Examiner suggests that Applicant abstain from introducing yet more “users” to avoid increased confusion as to what exactly Applicant is claiming. Further, Applicant should refrain from speaking of “a user” and “an event” then “the selected users” and “events”. Multiplicities should be consistent to avoid confusion.



26. As per Claims 45-47, Applicant should state “each of the selected users” for consistency.
27. As per Claim 48, Applicant refers to “the selected user” and “that selected user” after “each of the selected users”. Further, Applicant does not state whether all of the one or more items must be delivered before billing.
28. As per Claim 53, Applicant’s descriptive language after “no-show” in the claim differs from his/her description on page 22, paragraph 72. Examiner will interpret no-show, because it is explicitly explained, as “[a] charge a winner of a product a fee if the winner does not pick up the product within a specified period of time”, (e.g. like a storage fee). Otherwise it would not be differentiated from the loss of a deposit for not completing the transaction.
29. As per Claim 55, Applicant states “the multiple users” in lieu of “one or more of the multiple users” for consistency with Claim 54.
30. As per Claims 57-60, Applicant states “the users” or “those users” with lack of consistency to “one or more of the multiple users”
31. As per Claim 61, Applicant states “group” but follows it with “one...of the available item”. Under a broadest reasonable interpretation, Examiner will assume that the item bid on was “one” and the response was for “one” item.
32. As per Claim 62, Applicant should insert “one or more selected” before “users” and “one or more of” before “the items” for consistency with Claim 11.
33. As per Claim 66, Examiner suggests that Applicant insert “one or more” prior to “available items” in the notifying step and “multiple” prior to “users” in the

obtaining step for consistency of terminology. Further, “response messages” lacks antecedent basis.

34. As per Claims 67-76, Applicant should insert “one or more available” prior to “items” for consistency with Claim 66.

35. As per Claim 78, Applicant should insert the word “multiple” prior to “users” for consistency. Further, “the offering” lacks antecedent basis.

36. As per Claim 79, Applicant should insert the word “multiple” prior to “users” for consistency.

37. As per Claim 83, Applicant should insert “one or more” prior to “available items” in two instances for consistency with Claim 66.

38. As per Claim 85 & 86, Applicant should insert “one or more” prior to “available items” for consistency with Claim 66.

39. As per Claim 91, Applicant should insert “available” prior to items in the messaging component limitation. Further, user should be plural in the messaging component step for consistency. Lastly, Applicant may wish to refer to the “users” as “interested users” in the match finder component limitation.

40. As per Claim 93, Applicant does not remain consistent with the “some of the multiple users” and “multiple of the users” in the messaging component limitation. Lastly, Applicant may wish to refer to the “users” as “interested users” in the match finder component limitation.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 7, 9, 11, 28, 54, 63, 66, & 89 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per Claim 1, Applicant claims a method but confusingly implies it as intricately performed by a system. As such, one could interpret Claim 1 as actually claiming a system capable of completing the method or necessary to complete the method.

As per Claim 7, Examiner suggests that “of the unselected buyers” be inserted after “being highest among the bid prices” for clarity as the modifying phrase is disjunctive.

As per Claim 9, Examiner is unclear to what Applicant is referring to as “content”. Clarification is desired. One of skill in the art would not be apprised of the scope of the word “content”.

As per Claim 11, Applicant claims a method, but confusingly implies it as intricately performed by a computer. As such, one could interpret claim 11 as actually claiming an apparatus capable of completing the method or necessary to complete the method.

As per Claim 28, Applicant introduces “appropriate users” without an indication of how these differ from “selected users”. Further, Applicant states “the message” and “the multiple messages” and “other messages” and “the messages” in a confusing manner.

Examiner questions whether one of skill in the art would be apprised of what exactly Applicant is claiming.

As per Claim 54, Applicant states “one or more of the selecting of the subset of users...and the selecting of one or more users”. This is inconsistent with terminology utilized in Claim 11 raising ambiguity. Examiner suggests utilizing numbers or letters to highlight different elements and use of consistent terminology.

As per Claim 63, Applicant is unclear as to which “selecting” step he/she is referring.

As per Claim 66, a computer readable medium does not “cause a computing device” to do anything. Here, a processor of the computer executes instructions recorded on the computer readable medium to cause the computing device to perform tasks. This technicality must be corrected. See MPEP 2016.01.

As per Claim 89, Applicant is unclear as how the data transmission medium is related to the “computer-readable transmission mediums”. [Specification, page 11, paragraph 37]. Here Examiner recognizes the air as a transmission medium. As written, Applicant is claiming the air.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 11, & 66-93 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per Claim 1, Applicant claims neither solely a “method” nor a “system,” but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. §101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See MPEP 2173.05(p). Applicant claims a method “under control of the shopping server system”.

As per Claim 11, Applicant claims neither solely a “method” nor a “computer” but rather embraces or overlaps two different statutory classes of invention set forth in 35 U.S.C. §101 which is drafted so as to set forth the statutory classes of invention in the alternative only. See MPEP 2173.05(p). Applicant claims a method as “computer implemented”.

As per Claims 66-90, Applicant claims a computer-readable medium which, according to Applicant’s specification, includes not only “a computer-readable medium, such as a hard disk, a memory, a network, or a portable article to be read by an appropriate drive”, but also “transmi[ssions] as generated data signals (e.g. as part of a carrier wave) on a variety of computer-readable transmission mediums, including wireless-based and wired/cable-based mediums.” [Applicant’s Specification, page 11, paragraph 37, emphasis added]

According to MPEP 2106.01, “functional descriptive material” consists of data structures and computer programs which impart functionality only when employed as a computer

component. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. As such, functional descriptive material is considered non-statutory when not recorded on a computer readable medium. Here, Applicant's attempt to include data structures as transmitted data signals on computer-readable transmission mediums results in his/her claim being interpreted to cover both statutory and non-statutory subject matter. As such, a 35 U.S.C. §101 rejection is made as to all claims ambiguously referencing a computer readable medium. Claim 89 specifically, is nonstatutory subject matter on its face.

As per Claims 91-93, applicant states “component” (implying structure like Specification, page 10, paragraph 35), however Applicant's specification admits the “system [as] executing in memory, and in some embodiments it may include a variety of specialized components and/or modules” [Specification, page 10, paragraph 34]. “Alternatively, in other embodiments some or all of the software modules and/or components may execute in memory...” [Specification, page 11, paragraph 37]. Here, software and data structures are non-statutory unless recorded on a computer readable medium. See MPEP 2016.01. Since Applicant's claims can be interpreted to cover both statutory and non-statutory subject matter, said claims are rejected under 35 U.S.C. §101.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-5, 7, 8, 13, 17, 61, 62, 64, 65, & 67-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Combination A**: Mendiola et al (09/878,338) [Pub. No.: 2002/0032641] in view of Wagorn et al (09/892,449) [Pub. No.: 2002/0002509] and further in view of Fisher et al (6,243,691).

As per Claim 1, Mendiola et al ('338) teaches the method as follows:

for each of multiple sellers of products [see paragraphs 111 & 112, "registered user", "to add a product or service to the auction server" Here, Examiner notes that this is a seller.],

assisting the seller in establishing a sales campaign [see paragraphs 112-129 & requirements are "checked for completeness", paragraph 130] for each of one or more Dutch auctions [paragraph 116, "Auction Type/Method...Dutch auction], by

for each of one or more products that are each to be offered by the seller as part of a Dutch auction, receiving description information from the seller of a planned sales campaign for the Dutch auction for the product [see paragraphs 112-129, "user submits product data"], for each of the users determined to be appropriate for a Dutch auction sales campaign, sending a notification message [see Wagorn et al ('449) discussion below] to that user of the Dutch auction, the sent notification message being an SMS message such that the user can place a bid for one or more of the copies of the product available [see Fisher et al ('691) discussion

below] as part of that Dutch auction by replying to the notification SMS message; Here, Mendiola et al ('338) teaches a “mobile auction process through the use of the two-way SMS communication facility found in many digital wireless devices.” [paragraph 16]. Here, a user can “more conveniently and quickly send a command to the auction server (e.g., raise a bid to a particular level) via simple SMS transmissions (e.g. by simply hitting the ‘Reply’ option...and then entering a generic command or numeric message in the body of the message.” [see paragraph 20].

assisting in completing multiple of the Dutch actions by, for each of those Dutch auctions, receiving bids from multiple of the users that are each for one or more of the copies of the product available as part of the Dutch auction [see Fisher et al ('691) discussion below], the bids received as SMS messages; [paragraph 18, “auction server..send[s] and receive[s] short messages or commands via SMS”]

so that users of wireless cellular telephones can shop for products by receiving notification of Dutch auctions for the products [see Wagorn et al ('449) discussion below] and by placing bids on those Dutch auctions from their wireless cellular telephones [see paragraph 18, “auction server..send[s] and receive[s] short messages or commands via SMS”]

**However,** Mendiola et al ('338) does not specifically disclose:

receiving information for each of multiple users of wireless cellular telephones that indicates one or more categories of products of interest to that user; Regardless, Wagorn et al ('449) teaches that “a buyer may choose receive an email notice every time a notice is posted that relates to a specific category of product or service that the buyer is interested in buying.” [see paragraph 22] Further, Wagorn et al ('449) teaches that such notices be “auction notices”



[see paragraph 16] that can be set up at registration [paragraph 14]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include receiving information concerning preferences of categories of products of interest to the user. One would be motivated to do so given that such "monitoring and alert services" [paragraph 18] "help prospective buyers and sellers engage in interactive trade" [paragraph 9]. Further, Wagorn et al ('449) discloses the application of its invention to "wireless and voice interfaces" [paragraph 11].

assisting the seller in establishing a sales campaign...by...

the description information indicating multiple copies of the product available as part of the Dutch auction and indicating criteria for buyers to win the Dutch auction so as to acquire one or more of the multiple available copies; However, Mendiola et al ('338) does disclose criteria for buyers to win the Dutch auction through "Auction Start Date and Time" [paragraph 119, e.g. bids accepted only after the auction commences], Auction Duration [paragraph 120, e.g. bids accepted only before auction ends], Payment Method [paragraph 124, e.g. payment only by check, cash, etc.], Minimum Bid [paragraph 126, e.g. bids must be above a certain amount], Reserve Bid [paragraph 127, e.g. bidder, although possibly winning the auction, may not ultimately win the product/service if not above seller's reserve price], and Bid Increment [paragraph 128, e.g. bidder must bid in certain increments to be a valid bid.]. Also, one would appreciate that certain criteria for winning exist purely as a result of calling the auction a "Dutch auction" or other auction form. Regardless, Fisher et al ('691) teaches that "one of skill in the art...will further recognize that a variety of different auction formats may be implemented...the

simplest...awards the merchandise to the top bidder or bidders in accordance with their bids once bidding has stopped. Using this format, if there is a plurality of a specific item, the system awards the merchandise to the top bidders. Bidders may bid on more than one unit..." [column 9, lines 31-41]. Further, Fisher et al ('691) teaches the Dutch auction format [see column 10, lines 1-3 & 7-9] as "most fair when a plurality of a specific item is being auctioned." [column 10, lines 4-5] with criteria of being the "top bidders for whom there is available inventory" [column 10, line 2]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the auctioning of multiple copies of an item in a Dutch auction with respective criteria to win the auction. One would be motivated to so do given that there is often "a plurality of winning bidders sufficient to match [a] plurality of auctioned items" [see column 3, lines 49-50].

for each of the Dutch auction sales campaigns, determining multiple of the users of the wireless cellular telephones that are appropriate for the sales campaign, the determining of the appropriate users based at least in part on the product category interest information received from those users; Regardless, Wagorn et al ('449) teaches a system that "notif[ies] a given user [] when a particular type of product or service requested by the user has become available." [see paragraph 9]. Further, Wagorn et al ('449) teaches utilizing a "user profile" [paragraph 14] to determine such sent notices in accordance with "specific categor[ies] of product[s] or service[s] that the buyer is interested in buying." [paragraph 22]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al

(‘338) to include determining appropriate target users for Dutch auction sales campaigns based in part on the product category and user profiles/interests. One would be motivated to do so, even over wireless systems [see Wagorn et al (‘449) paragraph 11, “wireless [] interface”], given that targeted marketing is always more efficient than undirected mass marketing.

assisting in completing multiple of the Dutch actions by...

determining winners of the Dutch auction based at least in part on the received bids and on the indicated criteria for the Dutch auction; However, Mendiola et al (‘338) does disclose its application in a Dutch auction [paragraph 116] and those of skill in the art would understand all of the known implications/criteria of such an auction. Regardless, Fisher et al (‘691) teaches the determination of winners of a Dutch auction by “award[ing] the merchandise to all of the top bidders for whom there is available inventory at the price bid by the lowest successful bidder...[where] the highest bidders are awarded the merchandise but at the same price for all successful bidders, the price by the lowest successful bidder.” [column 10, lines 1-3 & 7-9]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include determining winners of the Dutch auction based at least in part on the received bids and other indicated criteria for the auction. One would have been motivated to do so because winners would necessarily be determined based on the known understanding (by those in the art) of the established auction format (e.g. Dutch auction format) only modified by express criteria outside of said known understanding.<sup>4</sup>

notifying the seller for the Dutch auction of the determined winners of the Dutch auction and/or notifying each of the determined winners of the Dutch auction of a quantity of copies of the product for the Dutch auction that the determined winner has won; However, Mendiola et al ('338) does disclose capabilities to send "notifications to some or all of the users that have bid for that product." [paragraph 144] Further, "the trade and auction handler can identify the user from their GSM mobile telephone number." [paragraph 143]. Regardless, Fisher et al ('691) teaches that at auction close, the system "notifies the winning bidder or bidders...as to the auction outcome." [column 5, line 48]. Further, Fisher et al ('691) teaches a Dutch auction and the possibility of multiple item winnings. [see Figure 10]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include notifying the seller of auction winners and/or notifying each of the winners of what, exactly, they have won. One would have been motivated to do so because a contract has been formed and the parties need this necessary information to complete the transaction.

delivering the copies of the product for the Dutch auction to the determined winners of the Dutch auction by,

for each of one or more of the determined winners, notifying that determined winner of a geographical pick-up location at which to obtain the one or more copies of the product that that determined winner has won and providing those copies of the product to that determined winner at that pick-up location; However, Mendiola et al ('338) does

disclose the seller notifying the user of “[d]etails concerning the shipment of the product from the seller to the successful buyer.” [paragraph 125].

for each of the determined winners that are not notified of a geographical pick-up location, obtaining a geographical delivery location from that determined winner and delivering the one or more copies of the product that that determined winner has won to that delivery location. However, Mendiola et al (‘338) does disclose registration of the buyer [paragraph 19] including information such as the “user’s name, address, a unique identification number of a messaging capable wireless device owned by the user such as a GSM mobile phone number, e-mail address, and nickname.” [paragraph 98].

Regardless, Fisher et al (‘691) teaches that sellers, upon auction close often “ship the merchandise to the winning bidders” [column 2, line 20]. Further, Fisher et al (‘691) teaches a bid validator that verifies a “shipping address” as being entered with a bid. [column 7, line 30]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include the delivery of won item(s) to either a pre-defined location or the actual location of the buyer. One would be motivated to do so given that actual delivery of the product/services is necessary to complete the transaction. Further, shipment of the goods via a defined location would be cheaper than requiring the buyer/winning bidder to arrange actual pick-up of the item(s).

As per Claim 3, Mendiola et al ('338), as modified, teaches the method of Claim 1 above.

Further, Mendiola et al ('338) teaches under control of a computing device of one of the sellers [paragraph 112, "the [registered] user accesses the auction server using their computer"]: sending description information to the shopping server system [paragraph 112, "submits the product data to the auction server"] for a sales campaign [paragraph 111, place their products for trade or auction] for a Dutch auction for a product offered by the one seller [paragraph 116, "Dutch auction"];

However, Mendiola et al ('338) does not specifically disclose before receiving notification from the shopping server system of winners of the Dutch auction, monitoring the sales campaign by obtaining information from the shopping server system that indicates bids received from users for the Dutch auction. Regardless, Mendiola et al ('338) does teach storing all user bids in a database as associated with the specific product being auctioned [paragraph 132].

Nevertheless, Wagorn et al ('449) teaches that "websites offer various types of watch-and-alert services...[where users] can arrange to have certain on-line 'buy' or 'sell' postings or other activities monitored." [paragraph 5, emphasis added]. Further, Wagorn et al ('449) teaches the monitoring of "offers" [see paragraph 9]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include such monitoring of bids (offers) of a sales campaign/auction by a seller via said server information. One would be motivated to do so given that (a) sellers would certainly be curious of the potential sale contract they are entering, (b) of the profits they may realize or (c) of market conditions [paragraph 9].

As per Claim 4, Mendiola et al ('338), as modified, teaches the method of Claim 1 above.

Further, Mendiola et al ('338) teaches under control of the wireless cellular telephone of one of the users: receiving a notification SMS message from the shopping server system for a sales campaign

[paragraph 135, "auction [] handler send[s] and SMS message to the user's GSM mobile phone] for a Dutch auction having multiple available copies of a product [see Claim 1 discussion],

the received SMS message indicating multiple options for responding with a bid for one or more of the available product copies; [see paragraph 137, "forwards a message text...instructions for

placing a further bid"] and in response to an instruction from the one user, sending a reply SMS

message for the received notification SMS message [paragraph 137, "reply to this message"]...the

included bid based on a selected one of the indicated multiple options for responding. [paragraph 137,

"simply reply..specify bid type and amount" or paragraph 140 "regular bid...'regular

1200' [or] automatic proxy bid...'auto 1200'"]

However, Mendiola et al ('338) does not specifically disclose includes a bid for multiple of the

available product copies at a specified bid price. Regardless, in line with the discussion in Claim

1 above, it would have been obvious to one of ordinary skill in the art, in view of Fisher

et al ('691), that multiple available copies of a product could be bid on at the same time.

As per Claim 5, Mendiola et al ('338), as modified, teaches the method of Claim 1 above.

However, Mendiola et al ('338) does not specifically disclose under control of the wireless

cellular telephone of one of the users: receiving one or more SMS messages from the shopping server

system that each indicate one or more categories of products of potential interest to the one user, the SMS messages received as part of a registration process for potential buyers; and sending one or more response

SMS messages to the shopping server system such that at least one of the sent response SMS messages

indicates one or more categories of products of interest to the one user. Regardless, Mendiola et al

(‘338) does disclose the capability of an auction server to send SMS messages to a user [see paragraph 135]. In this vein, Wagorn et al (‘449) teaches a user registering to create a user profile [paragraph 14] and the ability to indicate potential purchase interest by “selecting appropriate categor[ies]” [paragraph 15]. Here, Wagorn et al (‘449) further teaches the capability to target advertise to candidates “most likely to buy” based on “associative coupling...correlating target group data...[to] user profile data...[and] how a user utilizes the system.” [see paragraph 24] As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include a server system that sends advertising of various product categories of interest to a user via SMS messaging either during registration (to build a profile) or after registration (based on statistical use of the system). Further it would have been obvious for the user to respond via SMS message indicating interest in said categories. One would have been motivated to do so given that prudent individuals will utilize the tools available to them. For instance, the registration process and building of profiles (as evidenced by Wagorn et al (‘449)) was previously done via computer. Here, one would for efficiency reasons [Mendiola et al (‘338), paragraph 2], (e.g. for a lack of convenient internet access), utilize SMS to register for quick bidding and/or only query relevant categories of interest (to limit the amount of extraneous material accessed/assessed). Further, for cost reasons, one may wish to limit the quantity of messaging taking place. As per Claim 7, Mendiola et al (‘338), as modified, teaches the method of Claim 1 above. Further, Mendiola et al (‘338) teaches the criteria indicated for each of the Dutch auctions for buyers to win that Dutch auction includes a minimum bid price [paragraph 126]



However, Mendiola et al ('338) does not specifically disclose the determining of the winners of each of the Dutch auctions includes repeatedly selecting a remaining unselected one of the buyers for that Dutch auction as one of the winners of that Dutch auction based on the bid price of that one buyer for that Dutch auction being highest among the bid prices for that Dutch auction of the unselected buyers and being above the minimum bid price for that Dutch auction, the selecting continuing until the selected winners have aggregately placed bids for each of the multiple available copies of the product for that Dutch auction or until there are no more remaining unselected buyers with bid prices for that Dutch auction above the minimum bid price for that Dutch auction. Regardless, Fisher et al ('691) explains the determining steps of successful winners of a Dutch action . [see column 9-10, lines 67-32 & Figure 10]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the above claimed steps of Dutch auction format. One would be motivated to do so given that bidders would rely on such a known format in making their bids. Further, one would practically expect that only the number of available copies would be ultimately "won" (if demand and adequate bids exists) and that bids would have to be above a minimum bid to be considered.

As per Claim 8, Mendiola et al ('338), as modified, teaches the method of Claim 1 above.

However, Mendiola et al ('338) does not specifically disclose the description information for the sales campaign for one of the Dutch auctions further indicates demographic information regarding users to be notified of the Dutch auction, and wherein the indicated demographic information is used by the shopping server system during the determining of the multiple appropriate users for that Dutch auction. Nevertheless, Wagorn et al ('449) teaches that demographic information [see paragraphs 45-51, e.g. type of business, location, preferred language, etc], held in a user profile, is utilized to target "those most likely to buy...the products or services" [see paragraph 24].

As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include demographic information when targeting users appropriate for the Dutch auction. One would have been motivated to do so given that matching potential consumers to product offerings, via demographics, is a basic, predictable marketing approach.

As per Claim 13, Mendiola et al ('338), as modified, teaches the method of Claim 12.

However, Mendiola et al ('338) does not specifically disclose wherein each of the auctions is a Dutch auction, and wherein each of the Dutch auctions offers multiple items that are copies of a single product such that multiple users are selected to each purchase at least one of the items. Nevertheless, Fisher et al ('691) teaches the Dutch auction format [see column 10, lines 1-3 & 7-9] as "most fair when a plurality of a specific item is being auctioned." [column 10, lines 4-5] with winners being the "top bidders for whom there is available inventory" [column 10, line 2]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the auctioning of multiple copies of an item in a Dutch auction with winners purchasing at least one of the copies. One would be motivated to so do given that there is often "a plurality of winning bidders sufficient to match [a] plurality of auctioned items" [see column 3, lines 49-50].

As per Claim 17, Mendiola et al ('338), as modified, teaches the method of Claim 11.

However, Mendiola et al ('338) does not specifically disclose wherein each of the auctions offers multiple items, and wherein the multiple items of each of the auctions are such that two or more of the multiple items are of a distinct type. Nevertheless, Fisher et al ('691) teaches that an auction can comprise multiple distinct items like "art, coins, and antiques". As such it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention

to modify Mendiola et al ('338) to include auctions where multiple items are offered and one or more of the items are distinct. One would be motivated to do so given that multiple items are often auctioned at the same time, under the same auction format (e.g. estate auction). Further, Fisher et al ('691) teaches incorporation of technology into traditional auction formats. [column 1, line 50].

As per Claim 61, Mendiola et al ('338), as modified, teaches the method of Claim 11.

Further, Mendiola et al ('338) teaches at least one of the multiple options for responding is to place a bid for one or more of the available items [paragraph 137], and wherein at least some of the response messages each specify a bid amount for a specified group of one or more of the available items [paragraph 135, "user's bid is beaten", thus other bid responses are received]. Further, Fisher et al ('691) teaches the auctioning of a plurality of items [column 3, line 48] and that "bidders may bid on more than one unit" [column 9, line 40]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include bidding on a group of available items. One would be motivated to so do given that there is often "a plurality of winning bidders sufficient to match [a] plurality of auctioned items" [see column 3, lines 49-50].

As per Claim 62, Mendiola et al ('338), as modified, teaches the method of Claim 61 above. However, Mendiola et al ('338) does not specifically disclose the selecting of the users to purchase the items includes using the specified bid amounts from the response messages obtained from the selected users to determine a purchase price for the available items. Nevertheless, Fisher et al ('691) teaches the use of the specified user bids in selecting winning users and the determination of the purchase price. [see column 9, lines 43-65 for Standard Auction or column 10, lines 10-32 for Dutch auction]. As such, it would have been obvious to one

of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the determination of purchase price and the selection of winners based on bid amounts. One would be motivated to do so given that auction systems are traditionally expected to adhere to a specific process in determining winners, e.g. standard format, dutch format, etc.

As per Claim 64, Mendiola et al ('338), as modified, teaches the method of Claim 11.

However, Mendiola et al ('338) does not specifically disclose after the selecting of the users, notifying the seller of the purchasing of the available items by the selected users. Regardless, Fisher et al ('691) teaches that at auction close, the system "notifies the winning bidder or bidders...as to the auction outcome." [column 5, line 48]. Further, Fisher et al ('691) teaches the possibility of multiple items being won [column 9, line 39]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include notifying the seller of auction winners and what, exactly, they have won. One would have been motivated to do so because a contract has been formed and the parties need this necessary information to complete the transaction.

As per Claim 65, Mendiola et al ('338), as modified, teaches the method of Claim 11.

Further, Mendiola et al ('338) teaches the wireless devices are wireless telephones. [paragraph 19, "mobile phone"].

As per Claims 67-76, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 66. Further, Mendiola et al ('338) teaches the items are available as part of an

auction using a traditional auction format [paragraph 116, “regular auction”] a Dutch auction format [paragraph 116, “Dutch auction”], a reverse bidding format [paragraph 15, “reverse auctions”], and a fixed price offer [paragraph 15, “fixed price model”]. However, Mendiola et al (‘338) does not specifically disclose the items are available as part of an auction using (a) a price guessing mechanism, (b) a price naming mechanism, (c) a one-price bidding mechanism, (d) a last minute sales mechanism, (e) a mass buying mechanism, OR (f) a mass selling mechanism. Regardless, Fisher et al (‘691) teaches that “[o]ne skilled in the art to which the present invention pertains will further recognize that a variety of different auction formats may be implemented using the basic technique described above.” [column 9, lines 32-35]. Here, Applicant’s specification agrees by referring to the above formats as “various...shopping/selling mechanism[s]” with limited explanation because each is known in the art. [see Applicant’s Specification, page 6, paragraph 28]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include the above further formats to administer the sale/auction/distribution of items to interested parties. One would have been motivated to do so given that bidding systems require a format to be adhered to. With a format disclosed, whatever it may be, the involved parties can transact with certainty in business transactions.

Claims 11, 12, 14-16, 18, 19, 21, 22, 24-26, 29, 33-36, 38-42, 46, 47, 66, 79, & 91-93 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Combination B:** Mendiola et al (09/878,338) [Pub. No.: 2002/0032641] in view of Wagorn et al (09/892,449) [Pub. No.: 2002/0002509].

As per Claim 11, Mendiola et al ('338) teaches the method as follows:

receiving information about multiple users of wireless devices; [See Abstract, “to register with the trading and auction system, a user must provide a unique identifier of a messaging-capable wireless device” and users as “buyers and sellers” (plural)]

receiving information about an auction for one or more items available from a seller; [Mendiola et al ('338) teaches a “user brows[ing] products available for auction (e.g. from sellers) on the auction server”. (paragraph 132, parenthetical added)]

sending messages to the selected users that indicate the auction for the one or more items and that indicate multiple options for responding; [see paragraph 137, “the product title, the current highest bid, and instructions for placing a further bid” including “simply reply[ing]” (paragraph 137) or type “regular” and an amount “[t]o place a regular bid” or type “auto” and an amount “[t]o place an automatic proxy bid” (paragraph 140). ]

obtaining response messages from multiple of the users that each specify at least one of the multiple options; [“user sends the SMS message (using options of paragraphs 137 & 140)”, (paragraph 141, parenthetical added) and “a higher bid...received from another user” (paragraph 143). As such, multiple users are involved.]

However, Mendiola et al ('338) does not specifically disclose:

automatically selecting a subset of the multiple users to notify about the auction as potential buyers for one or more of the items from the auction; Nevertheless, Wagorn et al ('449) teaches “notifying a

given user (a prospective buyer or seller) when a particular type of product or service [] becomes available.” [paragraph 9] As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include automatic selection of a subset of multiple users to notify about a particular item or items being auctioned. One would have been motivated to do so given that targeted advertisement is a basic marketing approach. In addition, such a process would further help users “participate in auctions and trades quickly and efficiently” [paragraph 2, Mendiola et al (‘338)].

automatically selecting one or more of the users from whom response messages were obtained to purchase one or more of the items from the auction based at least in part on the response messages. Regardless, Mendiola et al (‘338) implicitly discloses the ultimate selection of one or more winners of the auction, based on the response messages. Mendiola et al (‘338) teaches outbidding (paragraph 137), auction duration (paragraph 120), minimum bids (paragraph 126), reserve bids (paragraph 127) and an optional dynamic bid time (paragraph 129). As such, the auction will end at some time and those not “outbid” will automatically be designated as winners if satisfying the bid criteria such as minimum bid, reserve bid, etc. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention to automatically select winners, from those entering valid bids, at the auctions close. One would be motivated to do so because a contract is formed once bids are accepted that comply with the auction criteria.

As per Claim 12, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. Further, Mendiola et al (‘338) teaches the method [as] performed for each of multiple

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auctions, [paragraph 2, “invention has particular [ ]utility in allowing users...to participate in auctions”] and wherein at least some of the auctions are Dutch auctions [paragraph 116, “Dutch auction”].

As per Claims 14, Mendiola et al (‘338), as modified, teaches the method of Claim 12 above. Further, Mendiola et al (‘338) teaches wherein each of the Dutch auctions includes minimum criteria that must be satisfied by a user providing a response message in order for that user to be selected to purchases one or more of the items from the auction. [see paragraphs 116, 119, 120, 124, 126, 127, & 128].

As per Claims 15 & 16, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. Further, Mendiola et al (‘338) teaches wherein the method is performed for each of multiple auctions [paragraph 2, “invention has particular [ ]utility in allowing users...to participate in auctions”], and wherein each of the auctions use a traditional auction [paragraph 116, “a regular auction”] format **OR** a reverse auction format [Examiner notes that paragraph 116 does not limit the Auction Type to a Dutch auction by use of “for example”. In this vein, Mendiola et al (‘338) further contemplates its invention solving the problems of other “auction business models, such as reverse auctions” (paragraph 15)].

As per Claim 18, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. Further, Mendiola et al (‘338) teaches the messages sent to the selected users are SMS messages. [paragraph 137, “SMS message”]

As per Claim 19, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. Further, Mendiola et al (‘338) teaches the response messages from the users are SMS



messages. [paragraph 139, “reply to the SMS message using the reply facility of the GSM mobile phone”].

As per Claim 21, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. However, Mendiola et al (‘338) does not specifically disclose the messages sent to the selected users and the response messages from the users are instant messages. Regardless, Mendiola et al (‘338) does teach that some “mobile devices [are] equipped with Internet access” [paragraph 12] which allows users “to engage in basic auction activities, such as reading messages notifying [them] of the status of a bid, and instructing the auction server to raise [their] bid if it has been beaten”. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include the sending of messages to users and the response messages to those sent messages via instant message. One would be motivated to do so given that “[Internet] access via a mobile device is simply an alternative to a computer connected to the Internet” [paragraph 14] and that those of skill in the art would recognize that instant messaging is a capability of known computer systems.

As per Claim 22, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. Further, Mendiola et al (‘338) teaches each of the response messages from one of the users is generated by an application executing on the wireless device used by that user. [see paragraph 139, “using the reply facility of the GSM mobile phone” Here, Examiner notes that it is inherent that some type of application is running on the phone to “automatically” process the reply message as described.].

As per Claim 24, Mendiola et al ('338), as modified, teaches the method of Claim 11 above. Further, Mendiola et al ('338) teaches the received information about the auction indicates information related to a sales campaign for the auction, and including executing the sales campaign for the auction based at least in part on the indicated information. [see paragraphs 132 & 113-129.

Further, Mendiola et al ('338) teaches compliance with this data. (e.g. "Bids for items are not accepted before an auction commences.", paragraph 119)].

As per Claim 25, Mendiola et al ('338), as modified, teaches the method of Claim 24 above. However, Mendiola et al ('338) does not specifically disclose providing status information about the execution of the sales campaign to the seller during the execution so as to enable the seller to monitor the sales campaign. Nevertheless, Wagorn et al ('449) teaches a "notification service" where users (including sellers) "interested in a particular type of information or event" can view the data when it "becomes available. [paragraph 22]. Wagorn et al ('449) further teaches this service to include notification of the "bidding status of an auction". [paragraph 22]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include providing such status information to the seller for monitoring purposes. One would have been motivated to do so given that (a) sellers would certainly be curious of the potential sale contract they are entering, (b) of the profits they may realize or (c) of market conditions [paragraph 9].

As per Claim 26, Mendiola et al ('338), as modified, teaches the method of Claim 24 above. However, Mendiola et al ('338) does not specifically disclose the received information related to the sales campaign indicat[ing] a type of user that is appropriate for the auction, and wherein the selecting of the subset of users to notify about the auction includes selecting users of the

indicated type. Regardless, Wagorn et al ('449) teaches associative coupling [paragraph 24] which comprises correlating "target group data [] with user profile data". As such it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention to, to modify Mendiola et al ('338) to include (a) a seller establishing such target group data that would be appropriate to advertise an auction toward and (b) selecting the subset of users to receive notification based on that data. One would be motivated to do so given that targeted advertising is a basic marketing methodology to efficiently match potential consumer needs with product offerings.

As per Claim 29, Mendiola et al ('338), as modified, teaches the method of Claim 11 above. Further, Mendiola et al ('338) teaches notifying users other than the selected users in a manner other than by sending messages to the other users. [see paragraph 132, "user[s] may browse products available for auction on the auction server."].

As per Claim 33, Mendiola et al ('338), as modified, teaches the method of Claim 11 above. However, Mendiola et al ('338) does not specifically disclose notifying users about the auction in a targeted manner by advertising the auction using an information distribution medium in such a manner that the advertising is available to only designated users with access to the information distribution medium. Regardless, in line with the Claim 11 analysis above, Wagorn et al ('449) discloses a method of target advertising to users. Further, Wagorn et al ('449) discloses that users register and log-in with a password [paragraph 54] to "gain access" via Internet or e-mail systems [paragraph 1]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include targeting users about an auction using an information distribution medium (e.g. Internet, e-mail) with said notification being accessible only to designated

users (e.g. registered with passwords). One would be motivated to do so given that “watch and alert” systems are services to which users “subscribe”. [paragraph 5]. As such, this “value” would warrant limiting access to paying customers.

As per Claim 34, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. However, Mendiola et al (‘338) does not specifically disclose receiving a response message from a user other than one of the selected users that includes a bid amount, and wherein the automatic selecting of the users includes selecting the other user. [Examiner notes that “[o]nce registered, a user is able to browse products and services available for trade and auction” [paragraph 111]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include receiving bids (response messages) from users other than those to whom notices are sent. Further, it would have been obvious that one not formally notified of an auction could win the auction. One would be motivated to do so given that auctions are better performed with the largest number of potential purchasers/bidders. Here, with browsing capabilities, Mendiola et al (‘338) would permit any user the ability to bid on any items that interest them.

As per Claim 35, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. However, Mendiola et al (‘338) does not specifically disclose the received information about the multiple users includes information received from each of at least some of the users that indicates preferences of that user regarding receiving information about items, and wherein the selecting of the subset of users to notify about the auction for the available items is based at least in part on the received preference information. Nevertheless, Wagorn et al (‘449) teaches receiving “criteria specified by the user” [paragraph 22], and the facilitator distributing notices

based on the preferences [paragraph 23]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include receiving preference information regarding future notifications regarding items and basing the selection of those to receive a notice on the preferences. One would be motivated to do so given that customers, who list specific preferences, would not appreciate receiving information regarding items to which they did not approve. Otherwise a mass marketing approach would be taken.

As per Claim 36, Mendiola et al ('338), as modified, teaches the method of Claim 35 above. However, Mendiola et al ('338) does not specifically disclose the preference information received from at least some of the users indicates one or more types of items of interest to those users, and wherein the preference information from each of those users is received via one or more SMS messages from that user that are responses to messages sent to that user as part of a registration process. Nevertheless, Wagorn et al ('449) teaches preference information including one or more types of items of interest [paragraph 22, "specific category of product or service"]. Further, Mendiola et al ('338) already integrates SMS messaging into the registration process. [see paragraphs 98-101]. As such it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention to modify Mendiola et al ('338) to include receiving preference information via SMS messages during the registration process. One would be motivated to do so given that complete registration (including setting up preferences) via SMS is predictable because it would eliminate having to utilize a separate computer facility.

As per Claim 38, Mendiola et al ('338), as modified, teaches the method of Claim 35 above. However, Mendiola et al ('338) does not specifically disclose the received preference

information from each of those users is received via one or more instant messages. Regardless, under the logic of Claim 21 above, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include receiving preference information via instant messages. One would be motivated to do so given that "[Internet] access via a mobile device is simply an alternative to a computer connected to the Internet" [paragraph 14] and that those of skill in the art would recognize that instant messaging is a capability of known computer systems.

As per Claim 39, Mendiola et al ('338), as modified, teaches the method of Claim 35 above. However, Mendiola et al ('338) does not specifically disclose the received preference information from each of those users is provided by an applications executing on the wireless devices of those users. Regardless, under the logic of Claim 22 above, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the receiving of preference information through applications executing on the wireless devices of users. One would be motivated to do so given that applications already exist to transfer information [see paragraph 139, "using the reply facility of the GSM mobile phone"] and that preference materials are merely another form of information.

As per Claim 40, Mendiola et al ('338), as modified, teaches the method of Claim 35 above. However, Mendiola et al ('338) does not specifically disclose the received preference information from each of those users is received as part of a registration process initiated by a computing system executing the method. Nevertheless, Wagorn et al ('449) teaches the registration process and receipt of preference information via a computing system during a registration process. [see paragraphs 14 & 22] As such, it would have been obvious to

one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the receipt of preference information during registration on a computing system. One would be motivated to do so given that text messaging may be inefficient for registration given texting constraints and the time necessary to register in that manner.

As per Claim 41, Mendiola et al ('338), as modified, teaches the method of Claim 35 above. However, Mendiola et al ('338) does not specifically disclose the received preference information from each of those users is received as part of a registration process initiated by that user. Nevertheless, Mendiola et al ('338) teaches the registration as initiated by a user. [paragraph 93, "prospective user" & paragraph 96, "user accesses a registration form"]. As such, given the ability to set preferences as discussed in Claim 11, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the receipt of preference information during registration that was initiated by a user. One would be motivated to do so to better service user needs in the auction process.

As per Claim 42, Mendiola et al ('338), as modified, teaches the method of Claim 11 above. However, Mendiola et al ('338) does not specifically disclose billing each of the selected users for the items purchased by that user. Regardless, Mendiola et al ('338) recognizes that in auction systems "payment will be made as promised by the buyers" via required "payment [] methods". [paragraphs 6 & 124]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include a formal billing of users for purchased items. One would be

motivated to do so given that billing of purchasers is a necessary part of the transaction as consideration is due, when an auction ends, to fulfill the purchase contract.

As per Claim 46, Mendiola et al ('338), as modified, teaches the method of Claim 42 above. Further, Mendiola et al ('338) teaches the billing of the selected users is performed by charging credit cards of the selected users. [see paragraph 124, "credit card"]

As per Claim 47, Mendiola et al ('338), as modified, teaches the method of Claim 42 above. However, Mendiola et al ('338) does not specifically disclose the billing of the selected users is performed via store credit for the selected users that is provided by the seller.

Regardless, Mendiola et al ('338) does teach payment of an amount due via a credit card [paragraph 124]. Here, "store credit" can be broadly interpreted as including credit cards issued or sponsored by a seller organization. Alternatively, Wagorn et al ('449) teaches the use of advertising [paragraph 24] and "testing new markets" [paragraph 9]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the billing of users via store credit provided by sellers. One would be motivated to do so given that advertisement is merely an offered form of "credit" and that sellers predictably extend credit to promote or consummate a sale.

As per Claim 66, Mendiola et al ('388) teaches "program routines that are [] executed under the control of an operating system." [paragraph 92]. Inherently the programs are executed from a computer readable medium (e.g. memory, compact disk, etc.) by a processor in the computer. [see Figure 1] Further, Mendiola et al ('388) teaches the executed method as follows:



receiving information about one or more available items; [see paragraphs 113 (Title), 117 (Item Description), 121 (Category), 123 (Picture), etc]

notifying multiple users of wireless telephones about the available items; [paragraph 132, “user[s] may browse products available for auction” & paragraph 101, users register with their wireless telephones] Alternatively, Wagorn et al (‘449) teaches notifying users via email. [paragraph 22]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘388) to include the notification of users of available items via email. One would have been motivated to do so given that part of the registration process of Mendiola et al (‘338) already associates users to email. [paragraph 98]

obtaining messages from multiple of the users that are each sent by one of the users via one of the wireless telephones and that each specify a level of interest of the user in one or more of the available items; [see paragraph 137, “reply...and specify the bid type and amount”, & paragraph 135, “user’s bid is beaten” (thus other’s are bidding) and paragraph 144, “some or all of the users that have bid”. Here Examiner asserts that the aggressiveness of the amount of regular bid or proxy bid (paragraph 140) would be understood by those of skill in the art to represent “a level of interest of the user”. ]

However, Mendiola et al (‘338) does not specifically disclose:

selecting one or more of the users from whom messages were obtained to receive one or more of the items based at least in part on the response messages. Regardless, Mendiola et al (‘338) teaches bids as being successful. [paragraph 143] and recognizes the point of auctions, from the bidder perspective, of “win[ning]...by the minimum possible

incremental value.” [paragraph 133]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include the selection of one or more users as winners of the available items based on response messages. One would have been motivated to do so because a contract is formed once an offer is accepted and consideration is paid.

As per Claim 79, Mendiola et al (‘338), as modified, teaches “program routines that are [] executed under the control of an operating system” [paragraph 92] to perform the method of Claim 66. Further, Mendiola et al (‘338) teaches the notifying of the multiple users is performed in a manner that does not use the wireless telephones of the users. [paragraph 132, “users may browse products available for auction on the auction server using his computer paragraph ]. Alternatively, as discussed in Claim 66, it would have been obvious in view of Wagorn et al (‘449) to notify users via email.

As per Claims 91-93, Examiner notes that claims directed to an Apparatus must be distinguished from the prior art in terms of structure rather than function, *In re Danly*, 263 F.2d 844, 847, 120 USPQ 582, 531 (CCPA 1959). Further, a claim containing a “recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus” if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ2d 1657 (BPAI 1987).

As such, per Claim 91, Mendiola et al (‘338) teaches the system as follows:

a transaction manager component [paragraph 92, “auction server”] able to obtain information about multiple users of wireless devices [paragraph 98, via “registration handler”] and to obtain information about an auction for one or more available items, [paragraph 62, via “database”] the auction having specified criteria related to determining one or more winners of the auction; [paragraph 143, via “auction handler”] a messaging component [paragraph 92, “auction server” & paragraph 18, “SMSC server”] able to send messages to at least some of the multiple users that indicate the auction for the one or more items [paragraph 94, via “message dispatcher”] and to obtain response messages from multiple of the users that each specify an interest of the user in acquiring one or more of the available items; [paragraph 94, via “message receiver”] a match finder component [paragraph 92, “auction server”] able to automatically determine one or more of the users to each acquire one or more of the available items from the auction based at least in part on the response messages. [paragraph 143, via “auction handler”]

As per Claim 92, Mendiola et al (‘338) teaches the system of Claim 91. However, Mendiola et al (‘338) does not specifically disclose the transaction manager component and the match finder component are executing in memory of the computing device. Regardless, Mendiola et al (‘338) teaches a computer with an inherent processor and memory. [See Figure 1].

As per Claim 93, Applicant invokes 35 U.S.C. §112-6<sup>th</sup> paragraph by (1) utilizing the phrase “means for,” (2) modified by functional language, (3) without an indication of sufficient structure, materials, or acts to achieve those functions. In this vein, Claim 93 would ordinarily be construed to cover the corresponding structure, materials or acts disclosed in the specification and equivalents thereof. However, Applicant’s specification only describes generic structure without an indication of precise “means

for” application. [see Applicant’s specification, page 10, paragraph 35] As such, Examiner will interpret all claim limitations as reading on any prior art means which are capable of performing the specified functions under a broadest reasonable interpretation. As such, Mendiola et al (‘338) teaches the system of Claim 91. Further, Mendiola et al (‘338) teaches the trade and auction system with:

the transaction manager component consists of means for obtaining the information about the multiple users and for obtaining the information about the auction, [paragraph 92, “registration handling means” & “database means”] the messaging component consists of means for sending messages to the users and for obtaining response messages from the users, [paragraph 92, “message dispatching means”, “message receiving means”] and wherein the match finder component consists of means for automatically determining users to acquire the available items from the auction. [paragraph 92, “trade and auction handling means”] Further, Mendiola et al (‘338) structurally discloses (a) computers with input/output devices [Figure 1], for obtaining information, (b) an SMSC server system [paragraph 94] for sending/receiving messages and (c) an auction server [paragraph 92] with program routines performing the means listed above.

Claims 85-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over

**Combination B** above and further in view of Official Notice.

As per Claims 85-87, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 66. However, Mendiola et al ('338) does not specifically disclose the notifying of the multiple users is performed by providing IVR capabilities that supply information about the available items to each of the multiple users **AND** the supplying to each of the multiple users of the information about the available items via the IVR capabilities is performed after that user initiates a telephone call to access the IVR capabilities **AND** the obtaining of the messages from multiple of the users includes receiving information supplied by those users via the provided IVR capabilities. Regardless, Wagorn et al ('449) teaches generally the option of utilizing "voice interfaces" [paragraph 11] in an auction system. In this vein, Official Notice is taken that IVR capabilities (initiated via telephone) is old and well established in the art as a means to communicate information and initiate transactions as well as authenticate. For example, banking systems have utilized such systems in financial situations to disclose account information as well as transfer money between accounts after receiving appropriate reference account numbers and/or passwords. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include notifying users of item information (e.g. auction account information) via IVR after a user accesses the IVR via telephone (e.g. password or auction identifier authentication) as well as optionally allowing users to bid on auction items via IVR (e.g. potential transfers of money). One would have been motivated to do so given that not all potential purchasers have constant access to mobile phones or the

Internet. Further, it would be cheaper for users to alternatively receive information via IVR and menus as opposed to using cell phone/Internet minutes.

As per Claims 88-90, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 66. However, Mendiola et al ('338) does not specifically disclose the computer- readable medium is a memory of a computing device AND the computer- readable medium is a data transmission medium transmitting a generated data signal containing the contents AND the contents are instructions that when executed cause the computing device to perform the method. Regardless, Official Notice is taken that it is old and well established that program instructions can be recorded on various computer readable mediums (computer memory, compact disc, etc.) for execution via a processor in a computer to perform tasks. Further, Official Notice is taken that data can be transmitted via signals on various mediums (e.g. cables, lines, air, etc.). As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include a computer readable medium (comprising memory in a computing device) and any data transmission signals (traveling on a transmission medium) necessary for a computer to execute the method of Claim 66. One would have been motivated to do so given that computers are in widespread use as an efficient means to perform a vast array of tasks.

Here, Examiner asserts that data transmission signals are not statutory subject matter. See MPEP 2106.01. Further, the "data transmission medium" is not an adequate statutory "computer readable medium" because the functionality of the data structures cannot be realized as "a computer component" and the data structures are not "structurally and

functionally interrelated to th[at] medium” (data is merely being transferred). See §101 rejection above.

Claims 32, 45, 48, 54, 55, 59, & 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Combination B** above and further in view of Kivimaki (PCT/FI99/01024) [Pub. No.: 00/22906].

As per Claim 32, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. However, Mendiola et al (‘338) does not specifically disclose the sending of the messages to the selected users that indicate the auction is performed by sending a single message to each of multiple available users, and wherein the selected users are a subset of the multiple available users. Here, Examiner notes that the selected users are already a subset of the multiple available users as described in Claim 11. Regardless, Kivimaki (‘024) teaches the importance of mobile phone numbers and the use of that number in determining other information concerning a user. (e.g. name, address, location, billing, etc.). As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include sending messages only to users who are “available” at the time. One would be motivated to do so given that auctions could end before a voicemail is received or a text is ultimately read. One’s phone number, not unlike Kivimaki (‘024), is a logical/predictable way to discern information regarding a user’s availability (e.g. the phone is on).

As per Claim 45, Mendiola et al (‘338), as modified, teaches the method of Claim 42. However, Mendiola et al (‘338) does not specifically disclose the billing of the selected users is performed using a billing mechanism provided by a wireless service operator that provides service to the

wireless devices of the selected users. Nevertheless, Kivimaki ('024) teaches utilizing the “telephone number” (location-based information, e.g. area code) from the “short message” [page 9, line 30] as a link to carry out the billing procedure and delivery of the products” [page 9-10, lines 36-1] upon the systems automatic parsing of “identifier fields” [page 10, line 15] and determination of subscriber name and address from the operator of a mobile communications system. [page 9, lines 32-33]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicants invention, to modify Mendiola et al ('338) to include a mechanism (parser) and information from the service operator (address, etc) to effectuate billing of selected users. One would have been motivated to do so given that a phone number is unique to a subscriber and is more reliable than an e-mail address, etc. [Mendiola et al ('338), paragraph 19]. As such, a user, registered with his mobile phone number “is less likely to renege on a deal, since he can be easily tracked down.” [paragraph 19]. Further, auction systems rely on “payment [being] made as promised by the buyers.” [Mendiola et al ('338), paragraph 6].

As per Claim 48, Mendiola et al ('338), as modified, teaches the method of Claim 42.

However, Mendiola et al ('338) does not specifically disclose the billing of each of the selected users is performed at a time of delivery to the selected user of the one or more items purchased by that selected user. Regardless, following the logic of Claim 45 above, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the billing of users at the time of delivery of purchased items. Kivimaki ('024) links one's phone number to both billing procedures and delivery address. One would appreciate that billing could come prior to, contemporaneous to or



after delivery, especially given that billing terms may be increased due to shipping costs. [Mendiola et al ('338), paragraph 125].

As per Claims 54 & 55, Mendiola et al ('338), as modified, teaches the method of Claim 11. However, Mendiola et al ('338) does not specifically disclose receiving location-based information for one or more of the multiple users, and using the received location- based information for one or more of [a] the selecting of the subset of users, [2] the sending of the messages, and [3] the selecting of the one or more users **AND** the location-based information for the multiple users is received from an operator of a wireless service that is used by the wireless devices of those users. Regardless, Wagorn et al ('449) teaches the selection of a subset of potential purchasers by “notif[ying] a user when relevant data becomes available” that matches “criteria specified by the user” [paragraph 22]. Further, Wagorn et al ('449) teaches that this criteria include “particular location of source of supply” and that advertisements are be sent to those “most likely to buy, use, or otherwise benefit from the products or services offered (via correlation with the user profile).” [paragraphs 22 & 24]. In this vein, Kivimaki ('024) fleshes out the user profile by utilizing the “telephone number” (location-based information, e.g. area code) from the “short message” [page 9, line 30] as a link to carry out the billing procedure and delivery of the products” [page 9-10, lines 36-1] upon the systems automatic parsing of “identifier fields” [page 10, line 15] and determination of subscriber name and address from the operator of a mobile communications system. [page 9, lines 32-33]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al ('338) to include the receipt of location-based information and use of that information in targeting appropriate materials for the appropriate persons. (e.g. sale of perishable goods within the area code of the

phone number or sending notice of the sale of a tractor to farmers). One would have been motivated to do so because more targeted advertisement is a basic task in efficient marketing. Further, it would have been obvious that such location information could be received from the wireless service operator of the users. One would have been motivated to do so given that a phone number is unique to a subscriber and is more reliable than an e-mail address, etc. [Mendiola et al ('338), paragraph 19]. As such, a user, registered with his mobile phone number "is less likely to renege on a deal, since he can be easily tracked down." [paragraph 19].

As per Claims 59 & 60, Mendiola et al ('338), as modified, teaches the method of Claim

11. However, Mendiola et al ('338) does not specifically disclose receiving location-based information for one or more of the multiple users, and using the received location- based information [1] for delivering to those users the items from the auction that were purchased by those users **AND** [2] for obtaining payment from those users for items from the auction that were purchased by those users.

Regardless, Kivimaki ('024) teaches utilizing the "telephone number" (location-based information, e.g. area code) from the "short message" [page 9, line 30] as a link to carry out the billing procedure and delivery of the products" [page 9-10, lines 36-1] upon the systems automatic parsing of "identifier fields" [page 10, line 15] and determination of subscriber name and address from the operator of a mobile communications system.

[page 9, lines 32-33]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include using received location-based information (telephone number, etc) to deliver items and obtain payment (via billing) for items purchased by users. One would have been motivated to do so given that a phone number is unique to a subscriber and is more reliable than an e-

mail address, etc. [Mendiola et al ('338), paragraph 19]. As such, a user, registered with his mobile phone number “is less likely to renege on a deal, since he can be easily tracked down.” [paragraph 19]. Further, if the phone number is active, it is likely that address information is updated because phone bills have been paid.

Claims 6, 10, 56-58, 63 & 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Combination A** above and further in view of Kivimaki (PCT/FI99/01024) [Pub. No.: 00/22906].

As per Claim 6, Mendiola et al ('338), as modified, teaches the method of Claim 1 above.

However, Mendiola et al ('338) does not specifically disclose under control of the wireless cellular telephone of one of the users: requesting information from the shopping server system about currently available auctions, the requesting by sending one or more SMS messages to the shopping server system; receiving in response indications from the shopping server system of multiple currently available auctions of which the one user was not previously sent notifications; and in response to an instruction from the one user, initiating a bid for one of the indicated auctions by sending to the shopping server system an SMS message that indicates the one indicated auction and indicates a bid for that auction. Regardless, Mendiola et al ('338) does teach that “[o]nce registered, a user is able to browse products and services available for trade and auction (via computer)” [paragraph 111]. Further, Mendiola et al ('338) discloses that once an initial bid is set (via computer) “further bids can be sent to and received from the user’s GSM mobile phone without the need for the user to have access to his computer or the computer network” [paragraph 134] and that each product is associated with a unique identification number (UIN). [paragraph 132]. In this vein, Kivimaki ('024) teaches a “user of a mobile station (mobile phone) may []

send an initial short message to the auction management system informing that the user wants to take part in [an] auction.” [page 8, lines 24-26]. Further, Kivimaki (‘024) teaches that those participating receive information including “product type, an auction item code, and an upset price” [page 8, line 22] and that users bid by “writ[ing] a short message...that includes information on the new offer and the product (e.g. item code)” [page 9, lines 1-2]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include (a) a user requesting information from a server system, (b) the server system providing said information and (c) users placing bids, all via SMS messaging. Further it would have been obvious to avoid duplicating auction notices (already received) or sending auction notices for closed auctions (not available). One have been motivated to do so given that Mendiola et al (‘338) already utilizes SMS in auction systems and Kivimaki (‘024) proves further capabilities of SMS use. Further, providing duplicate or old information would be inefficient and only frustrate users due to the increased cost of sending or receiving unnecessary SMS messages.

As per Claim 10, Mendiola et al (‘338), as modified, teaches the method of Claim 1 above. However, Mendiola et al (‘338) does not specifically disclose under control of the shopping server system, receiving location-based information for one of the users in an automated manner, and using the received location-based information (a) in the determining of that user as one of the multiple appropriate users for one of the Dutch auctions and/or (b) in selecting that user as one of the determined winners for one of the Dutch auctions and/or (c) in determining how to deliver to that user one or more product copies that the user won for one of the Dutch auctions and/or (d) in automatically determining a billing procedure for that user for one or more product copies that the user won for one of the Dutch

auctions. Regardless, Kivimaki ('024) teaches utilizing the "telephone number" (location-based information, e.g. area code) from the "short message" [page 9, line 30] as a link to carry out the billing procedure and delivery of the products" [page 9-10, lines 36-1] upon the systems automatic parsing of "identifier fields" [page 10, line 15] and determination of subscriber name and address from the operator of a mobile communications system. [page 9, lines 32-33]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicants invention, to modify Mendiola et al ('338) to include the automated determination of location information for use in determining billing procedures and/or delivery options. One would have been motivated to do so given that a phone number is unique to a subscriber and is more reliable than an e-mail address, etc. [Mendiola et al ('338), paragraph 19]. As such, a user, registered with his mobile phone number "is less likely to renege on a deal, since he can be easily tracked down." [paragraph 19].

As per Claim 56, Mendiola et al ('338), as modified, teaches the method of Claim 11.

However, Mendiola et al ('338) does not specifically disclose receiving location-based information for one or more of the multiple users, and using the received location- based information for performing advertising for the auction at a physical location accessible to those users. Regardless, Fisher et al ('691) recognizes that "a physical gathering of bidders assembled at an auction house" still takes place [column 1, lines 11-12] and that it is necessary for bidders to "appear at the appointed time" [column 1, line 21]. In this vein, Wagorn et al ('449) teaches the sending of advertisements based on user profiles which include location information [paragraphs 47 & 49]. Further, Kivimaki ('024) as discussed in Claims 54 &

55 above, teaches the use of a mobile phone number as a link to identify location information such as delivery information, etc. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the use of received (during registration) or derived (from phone number) location based information to target advertising of physical auctions accessible to users. One would have been motivated to do so because Wagorn et al ('449) teaches that users are interested in things such as "particular location of source of supply". Further, one would predictably send advertisements to those "most likely to buy, use, or otherwise benefit from the products or services offered" for efficient marketing. This is not unlike posting yard sale signs at the end of one's street to draw a local crowd.

As per Claim 57, Mendiola et al ('338), as modified, teaches the method of Claim 11.

However, Mendiola et al ('338) does not specifically disclose receiving location-based information for one or more of the multiple users, and using the received location- based information to assist the users in finding a physical auction location at which the users can receive the items from the auction that were purchased by those users. Regardless, Mendiola et al ('338) does teach auctions require "that goods...are delivered as promised by the buyers" [paragraph 6] and that shipping information is often specified [paragraph 125]. In this vein, Fisher et al ('691) recognizes that traditional auctions disadvantageously require that the merchandise lots...be available at the auction venue for...subsequent pickup by the successful bidders." [column 1, lines 23-26]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include assisting users in finding a physical auction location to receive items purchased. One would be motivated to do so given that various mediums for bidding are

available (e.g. in-person, mail, fax, e-mail, see Fisher et al ('691) Background of the Invention) and that location information (pickup address) is necessary if the items are not shipped to the winning bidder automatically [Fisher et al ('691), column 1, line 29].

As per Claim 58, Mendiola et al ('338), as modified, teaches the method of Claim 11.

However, Mendiola et al ('338) does not specifically disclose receiving location-based information for one or more of the multiple users, and using the received location- based information to assist the users in finding a physical retail store at which the users can obtain the items from the auction that were purchased by those users. Regardless, Wagorn et al ('449) teaches that auction participants can be “businesses seeking to buy or sell products or services” [paragraph 9]. Here, in line with the logic of Claim 57 above, it would have been an obvious variant to assist the user in finding a physical retail store (versus an auction site) for users to pick up purchased items.

As per Claim 63, Mendiola et al ('338), as modified, teaches the method of Claim 11.

However, Mendiola et al ('338) does not specifically disclose after the selecting of the users, notifying the selected users via an SMS message. Regardless, Mendiola et al ('338) does teach sending “notifications to some or all of the users that have bid for that product.”

[paragraph 144]. Further, Fisher et al ('691) teaches that at auction close, the system “notifies the winning bidder or bidders...as to the auction outcome.” [column 5, line 48].

In this vein, Kivimaki ('024) teaches “short messages from the mobile center to the mobile phone can be used for giving information on products, current prices, and accepted offers.” [Abstract, emphasis added]. A such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('388) to include notification to selected users that they have won an auction via SMS

message. One would have been motivated to do so given that most prior correspondence was via SMS. If one can be told that he/she was outbid, it is clearly possible to eventually find out that one won via the same means.

As per Claim 77, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 66. Further, Mendiola et al ('338) teaches the messages obtained from the multiple users are SMS messages [paragraph 139]. However, Mendiola et al ('338) does not specifically disclose the notifying of the multiple users is performed using SMS messages.

Regardless, Wagorn et al ('449) teaches users registering with a system with requests to receive information. [paragraph 22]. Further, Kivimaki ('024) teaches "short messages from the mobile center to the mobile phone can be used for giving information on products, current prices, and accepted offers." [Abstract, emphasis added]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include initial contact via SMS message regarding products. One would have been motivated to do so given that (a) users have already expressed interest in items, (b) many users bid for such items via SMS and (c) the means of sending notice information about products via SMS is available.



Claims 2 & 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Combination A** above and further in view of Koskimies (10/282,510) [Pub. No.: 2004/0081110].

As per Claim 2, Mendiola et al ('338), as modified, teaches the method of Claim 1 above.

However, Mendiola et al ('338) does not specifically disclose replies by the users to the notification SMS messages use Premium SMS to enable billing of those users based on the replies.

Regardless, Mendiola et al ('338) does recognize that in auction systems “payment will be made as promised by the buyers” via required “payment [] methods”. [paragraphs 6 & 124]. In this vein, Koskimies ('510) teaches that “[c]harging for the downloaded data or content may also be accomplished in a number of ways...SMS content requests [can be] sent to a premium SMS number which manages the charging function.” [paragraph 67, emphasis added]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al ('338) to include billing of user replies via premium SMS services. One would be motivated to do so given that this service is intrinsically related to SMS messaging/billing in systems existing at the time of Applicant’s invention and that a prudent individual would utilize efficient tools available to him/her.

As per Claim 9, Mendiola et al ('338), as modified, teaches the method of Claim 1 above.

However, Mendiola et al ('338) does not specifically disclose wherein the description information from one of the sellers for the sales campaign for one of the Dutch auctions further indicates content for each of multiple messages that are each to be sent during an indicated one of multiple phases of the sales campaign to the users determined to be appropriate for the one Dutch auction, and wherein the assisting of the one seller in establishing the sales campaign for the one Dutch auction includes sending

each of the multiple messages to each of those determined appropriate users as an SMS message during the indicated phase of the sales campaign for that message. Nevertheless, Mendiola et al ('338) does disclose "the auction and trade handler (automatically) forward[ing] a message text to the message dispatcher for inclusion as the message body of the SMS message" [paragraph 137]. Further, Mendiola et al ('338) teaches that sellers can specify potential content comprising item description [paragraph 117], URL links to further information [paragraph 122], picture files [paragraph 123], etc as associated with the product UIN [paragraph 130]. In addition, Wagorn et al ('449) teaches the "selection of advertisements for users of the system." [paragraph 24]. Further, in this vein, Koskimies ('510) teaches that various "content" is capable of downloading utilizing SMS messages. [see paragraphs 37 & 38]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention to modify Mendiola et al ('388) to include customized content for messages (e.g. targeted advertising) as part of a multi-phase sales campaign and the automatic execution of that multi-phase sales campaign by a system server. One would be motivated to do so given that multi-phase marketing techniques and targeted advertising are known to be more effective ways of producing sales. Further, downloading of said messages via SMS is quicker and more efficient than requiring an Internet connection. [Mendiola et al ('388), paragraph 2].

Claims 20, 23, 27, 28, 30, 31, 37, 43, 44, 49-51, 78, & 80-84 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Combination B** above and further in view of Koskimies (10/282,510) [Pub. No.: 2004/0081110].

As per Claim 20, Mendiola et al ('338), as modified, teaches the method of Claim 11 above. However, Mendiola et al ('338) does not specifically disclose the messages sent to the selected users and the response messages from the users are MMS messages. Nevertheless, Koskimies ('510) teaches that MMS is often an alternative as a means of data transfer to mobile devices. [paragraph 49] As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include sending messages to users and users responding to the sent messages via MMS messaging. One would be motivated to do so given that MMS messages are not limited in length and can include multi-media content (e.g. sounds, pics) [paragraph 49]. Further, the product descriptions and pictures [paragraphs 117 & 123] of Mendiola et al ('338) would need such extra space and functionality for a quicker and more efficient/effective auction. [paragraph 2].

As per Claim 23, Mendiola et al ('338), as modified, teaches the method of Claim 22. However, Mendiola et al ('338) does not specifically disclose the executing applications are applets sent to the wireless devices by a computing device executing the method. Regardless, Koskimies ('510) teaches the downloading of applets or midlets via WAP for storage "on the mobile device". As such, it would have been obvious, especially given the discussion in Claim 21, to modify Mendiola et al ('338) to include the execution of applications (that were downloaded to the mobile device via applets from a source computing device) for

generating user response messages. One would be motivated to do so given that all mobile devices may not have the requisite applications for full functionality [paragraph 50] with all systems.

As per Claim 27, Mendiola et al ('338), as modified, teaches the method of Claim 24 above. However, Mendiola et al ('338) does not specifically disclose the information related to the sales campaign includes information related to multiple messages that have specified content and that are each to be sent to each of the selected users when distinct specified conditions are satisfied, and wherein the executing of the sales campaign includes sending each of the multiple messages to each of the selected users when the specified conditions for that message are satisfied. Nevertheless, Mendiola et al ('338) does disclose “the auction and trade handler forward[ing] a message text to the message dispatcher for inclusion as the message body of the SMS message” [paragraph 137]. Further, Mendiola et al ('338) teaches that sellers can specify potential content comprising item description [paragraph 117], URL links to further information [paragraph 122], picture files [paragraph 123], etc as associated with the product UIN [paragraph 130]. In this vein, Koskimies ('510) teaches that various “content” is capable of downloading utilizing SMS messages. [see paragraphs 37 & 38]. As such, Wagorn et al ('449), as previously discussed, teaches the “selection of advertisements for users of the system.” [paragraph 24]. Further, Wagorn et al ('449) teaches that the sending of advertisements may be based on/conditioned on, in part, “statistics related to how a user utilizes the system”. [paragraph 24]. In view of the foregoing, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include a seller customizing various messages/advertisements to send to users “likely to buy, use or otherwise benefit from the products or services

offered in the advertisement.” [Wagorn et al (‘449), paragraph 24]. One would be motivated to do so given that (a) different levels of content is available (e.g. basic description, information links, pictures) (b) messages/advertisements, of varying content could be sent via SMS, and (c) messages/advertising can be targeted based on user profiles as well as statistical correlations. Practically one would be more efficient and reach a more relevant customer base by targeting specific phases of advertisement based on a certain level of user interaction (e.g. how they have used the system in the past).

As per Claim 28, Mendiola et al (‘338), as modified, teaches the method of Claim 11 above. However, Mendiola et al (‘338) does not specifically disclose the received information from the seller about the auction includes indications of content for each of multiple messages that are to be sent to appropriate users before completion of the auction, wherein the message sent to the selected users includes the content indicated for one of the multiple messages, and including sending a series of other messages to the selected users such that each of the messages in the series includes the indicated content for one of the other multiple messages. Regardless, following the logic of Claims 9 & 27 above, the sending of multiple messages/advertisements is obvious in view of the presented art. Further, the seller indicates content for those messages as discussed in Mendiola et al (‘338) in paragraphs 113-129. Lastly, Mendiola et al (‘338) discloses bids/products being associated with a UIN. [paragraph 132]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s invention, to modify Mendiola et al (‘338) to include content provided from the seller as part of a series of messages to be sent to users (before completion of the auction) with said sent messages including content indicated for one of the other messages. One would be motivated to do so given that advertising is not practically relevant after the sale/auction

is over and that associating duplicate messages with common content (e.g. UIN) would better ensure consumer recognition and credibility of the auction.

As per Claim 30, Mendiola et al ('338), as modified, teaches the method of Claim 11 above. However, Mendiola et al ('338) does not specifically disclose notifying users about the auction in a broadcast manner. Regardless, Koskimies ('510) teaches notifying users of content accessible via SMS messaging through "television, Internet, publications, or other advertisements...as well as word of mouth." [paragraph 37]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include notification of users about the auction in a broadcast manner. One would have been motivated to do so given the advances in SMS use as evidenced by Koskimies ('510) and the advertisement means utilized to promote such use of SMS through television and other mediums.

As per Claim 31, Mendiola et al ('338), as modified, teaches the method of Claim 30 above. However, Mendiola et al ('338) does not specifically disclose the broadcast notifying of users about the auction includes advertising the auction using an information distribution medium in such a manner that the advertising is available to all users with access to the information distribution medium. Nevertheless, Koskimies ('510) teaches notifying users via television. [paragraph 37]. Television is an information distribution medium and those with access to a television would have the advertisement available for potential viewing. As such, notifying users of an auction via broadcast, including television broadcast, would be obvious under the logic of claim 30.

As per Claim 37, Mendiola et al ('338), as modified, teaches the method of Claim 35. However, Mendiola et al ('338) does not specifically disclose the received preference

information from each of those users is received via one or more MMS messages. Nevertheless, Koskimies ('510) teaches that MMS is often an alternative as a means of data transfer in mobile devices. [paragraph 49] As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include sending response messages (including preference information) via MMS messaging. One would be motivated to do so given that MMS messages are not limited in length and can include multi-media content (e.g. sounds, pics) [paragraph 49].

As per Claims 43 & 44, Mendiola et al ('338), as modified, teaches the method of Claim 42. However, Mendiola et al ('338) does not specifically disclose at least some of the multiple options for responding indicated by the messages sent to the selected users are such that performing the responding for those options generates an event that is billable to a user performing the responding, and wherein the billing of the selected users is based on the generated events for the selected users **OR** the billing of the selected users is based on Premium SMS. Regardless, Koskimies ('510) teaches that "[c]harging for the downloaded data or content may also be accomplished in a number of ways...SMS content requests [can be] sent to a premium SMS number which manages the charging function." [paragraph 67, emphasis added]. Here Examiner notes that the "data" is the mere text itself while the "content" is the good/service provided. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include billing of user replies (billable event) in addition to utilizing premium SMS based services. One would be motivated to do so given that these billing services are intrinsically related to SMS messaging in systems existing at the time of Applicant's invention and that a prudent individual would utilize efficient tools available to him/her.

As per Claims 49-51, Mendiola et al ('338), as modified, teaches the method of Claim 11.

However, Mendiola et al ('338) does not specifically disclose using Premium SMS to bill at least one of the selected users for a [1] periodic subscription fee related to the auctions [2] participation fee related to participating in the auction [or 3] participation fee [] specific to the auction. Regardless, Wagorn et al ('449) contemplates that users "subscribe[] to services to have "certain on-line 'buy' or 'sell' postings or other activities monitored". Further, Wagorn et al ('449) teaches various fees that are related to participating in the auction including translation fees [paragraph 27], a registration fee [paragraph 53], and a transaction fee [paragraph 90]. In this vein, Koskimies ('510) teaches that "[c]harging for the downloaded data or content may also be accomplished in a number of ways...SMS content requests [can be] sent to a premium SMS number which manages the charging function." [paragraph 67, emphasis added]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include using Premium SMS to bill users for periodic subscription fees (e.g. registration fees), participation fees specific to an auction (e.g. translation fees) or participation fees related to participating in an auction (e.g. transaction fees). One would be motivated to do so because services are being provided and extraction of payment is necessary. It is most simple and less costly to utilize existing consumer bills (e.g. phone bill) to receive payment than to establish an extensive accounts receivable and billing infrastructure.

As per Claim 78, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 66. However, Mendiola et al ('338) does not specifically disclose using Premium SMS to bill at least some of the notified users in such a manner as to reflect their participation in



the offering of the available items. Regardless, under the same logic of Claims 49-51 above, it would have been an obvious variation of Mendiola et al ('338) to bill at least some of the notified users via premium SMS. Ultimately, any service (e.g. notification) will usually require payment and premium SMS is a predictable means available at the time of Applicant's invention.

As per Claims 80 & 81, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 66. However, Mendiola et al ('338) does not specifically disclose the notifying of the multiple users is performed via a broadcast mechanism available to the multiple users and to others AND the broadcast mechanism is television. Regardless, Koskimies ('510) teaches notifying users of content accessible via SMS messaging through "television, Internet, publications, or other advertisements...as well as word of mouth." [paragraph 37].

Television is a broadcast mechanism through which users and others (with access to a television) would be notified. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include the notification of users via broadcast mechanisms including television. One would be motivated to do so given that television is known pervasive marketing approach for widespread coverage of potential customers.

As per Claim 82, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 80. Further, Mendiola et al ('338) teaches others includ[ing] users of wireless

devices other than wireless telephones. [paragraph 12, “mobile devices equipped with Internet access” & paragraph 10, “pagers”]

As per Claim 83, Mendiola et al (‘338), as modified, teaches “program routines that are [] executed under the control of an operating system” [paragraph 92] to perform the method of Claim 80. However, Mendiola et al (‘338) does not specifically disclose the available items are made available as part of an ongoing selling mechanism, and including, after the notifying of the multiple users about the available items, providing multiple update notifications to the multiple users in such a manner as to allow the multiple users to monitor progress of the ongoing selling mechanism. Regardless, Mendiola et al (‘338) does disclose eCommerce utilizing “fixed price models” [paragraph 15] and systems such as Amazon.com™ that sell items [in an ongoing manner] “displayed on its website” [paragraph 5]. Further, Mendiola et al (‘338) teaches notifying users by letting them know every time they are outbid [paragraph 135] and notifying generally of results by “send[ing] the same notifications to some or all of the users that have bid for that product” [paragraph 144]. Nevertheless, Wagorn et al (‘449) teaches an online system for trade facilitation, which comprises “products or services that [users] wish to buy or sell” without a limitation on how long the notice is posted [paragraph 9]. Here, users can comprise “businesses seeking to buy or sell products or services” [paragraph 9]. Further, Wagorn et al (‘449) teaches “automatically updat[ing]” users when items are both “posted as a notice” as well as being “an auction item” [paragraph 144]. Here, users are apprised of increases on the posted notice from events taking place in the separate auction. [paragraph 144]. In the same vein, users can request to be notified of the “bidding status of an auction.” [paragraph 22]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant’s

invention, to modify Mendiola et al ('338) to include items available as part of an ongoing sale mechanism as well as notifying users with updates for their monitoring of the sales. One would have been motivated to do so given that transaction systems profit from increasing demand and increasing the ultimate sale price. Sending updates would increase competition to achieve relevant market prices even for standard goods sold on an ongoing basis.

As per Claim 84, Mendiola et al ('338), as modified, teaches "program routines that are [] executed under the control of an operating system" [paragraph 92] to perform the method of Claim 83. However, Mendiola et al ('338) does not specifically disclose the providing of the update notifications to the multiple users is performed via the broadcast mechanism that is available to the multiple users and to the others. Regardless, Koskimies ('510) teaches notifying users of content accessible via SMS messaging through "television, Internet, publications, or other advertisements...as well as word of mouth." [paragraph 37]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include sending update notifications to users via a broadcast mechanism. One would have been motivated to do so given that the goal of the auction/selling approach is to stimulate competition and increase demand. As such, advertising updates on auctions via broadcasts is a predictable means for promoting competition.

Claims 52 & 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Combination B** above in view of Koskimies (10/282,510) [Pub. No.: 2004/0081110] and further in view of Official Notice.

As per Claims 52 & 53, Mendiola et al ('338), as modified, teaches the method of Claim 11. However, Mendiola et al ('338) does not specifically disclose using Premium SMS to bill at least one of the selected users for [1] a deposit fee related to the one or more items from the auction to be purchased by that user **OR** [2] for a no-show fee related to that user not completing the purchasing of the one or more items from the auction for which that user was selected. Regardless, Official Notice is taken that deposit fees and storage fees are old and well established in business relations. In this vein, Koskimies ('510) teaches that "[c]harging for the downloaded data or content may also be accomplished in a number of ways...SMS content requests [can be] sent to a premium SMS number which manages the charging function." [paragraph 67, emphasis added]. As such, it would have been obvious to one of ordinary skill in the art, at the time of Applicant's invention, to modify Mendiola et al ('338) to include using Premium SMS to bill users for deposit fees and no-show fees. One would be motivated to do so given that delinquent bidders must pay for a failed auction and the costs to re-auction the item(s). Use of premium SMS is logical because a user, registered with his mobile phone number "is less likely to renege on a deal, since he can be easily tracked down." [Mendiola et al ('338), paragraph 19].

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Scarito whose telephone number is (571) 270-3448. The examiner can normally be reached on M-Th (7:00-4:30), Alternate F (7:00-3:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dixon can be reached on (571) 272-6803. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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